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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,632	01/28/2004	Louie V. Harrison III	331860.9US	3747

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WYATT, TARRANT & COMBS, LLP
1715 AARON BRENNER DRIVE
SUITE 800
MEMPHIS, TN 38120-4367

EXAMINER

KILKENNY, PATRICK L

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

HH

Office Action Summary

Application No.

10/766,632

Applicant(s)

HARRISON, LOUIE V.

Examiner

Patrick J. Kilkenny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,6,8-10,12 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5,6,8-10,12 and 46-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6, 8-9, 46-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Wiesel (6,343,932). Wiesel discloses a restoration procedure kit with a unit package for carrying and applying a dental composite (Column 6, lines 5-18). The dental composite (16) is carried on a carrier film (12) with an enlarged central portion (14) that is covered by a film covering (18) that is releasably sealed to the carrier film adjacent the composite (Figs. 1 and 2). There is a delivery side and a spatulating side. The cover is in direct contact with the composite and is designed with a surface of non-adhesive release material (Column 4, lines 53-58), and it is also disclosed that a non-adhesive release coating may be applied for easier release (Column 5, lines 1-4). The carrier film is a elongated strip with laterally and longitudinally extending incisal tabs (22 and 24) from the central portion that are able to fold under the central portion of the carrier film and also wrap around the edges of the teeth with applied since they can be cut to fit specific lengths (Figs. 2 and 3, Column 3, lines 60-65). The unit packages can be made singly, or come in a plurality of adjacent packages in a long roll that can be

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individually cut out when needed (Column 3, lines 60-64). The carrier film can be translucent if light activation of the applied composite is necessary (Column 4, lines 21-24). The unit package also includes an outer strip (20), on which the carrier strip is disposed, and is releasably sealed to the adjacent cover. Wiesel does not disclose that the delivery kit is T shaped. However, the entire bottom length of the delivery unit (22 or 24) is an underlying incisal tab. The terminal ends of the same tabs are embrasure tabs since they can be cut to fit and capable of wrapping around the teeth to occupy the space in the embrasures. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to design the delivery kit of Wiesel in the form of a "T", since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person of ordinary skill in the art would find obvious for the purpose of providing a delivery unit for a composite that wraps around a tooth and is held in place, especially considering the design of Wiesel functions in the same manner despite the modification in the form. *In re Dailey and Eilers*, 149 USPQ 47 (1966).

Claims 2-3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiesel in view of Davie, Jr. et al. (4,125,190). Wiesel discloses the claimed invention with the exception of the cover being adjacent dome-like compules and not being in direct contact with the composite. Davie, Jr. et al. discloses a unit with adjacent compule covers (14) that are adjacent to and enclose the carrying film (20) and have dome-like shapes and do not contact the substance (24) held within the defined pockets. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the invention was made, to modify the cover of Wiesel with a dome-like cover that does not contact the dental composite, as taught by Davie, Jr. et al., so that the dental composite would not stick to the cover, and the use of non-adhesive cover materials or non-adhesive coatings could be eliminated from the design, which would decrease the complexity and price of manufacturing the unit package.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiesel in view of Jacobs et al., in further view of Sawhney et al. (5,947,278). Wiesel in view of Jacobs et al. discloses the claimed invention with the exception of there being perforation between the unit packages. Sawhney et al. discloses packaged cups for dental compositions with perforations (182) between the individual packages. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the unit package of Wiesel in view of Jacobs et al., in further view of Davies, Jr. et al. with perforations between the unit packages, as taught by Sawhney et al., so the individual packages could be easily removed without having to use a cutting device.

Response to Arguments

Applicant's arguments with respect to claims 1-45 have been considered but are moot in view of the new ground(s) of rejection. However it is noted that Column 6, lines 5-18 of Wiesel indicates that the delivery system can be used to deliver other common dental agents, as well as that generally defined a tooth whitening substance is a dental composite.

Conclusion

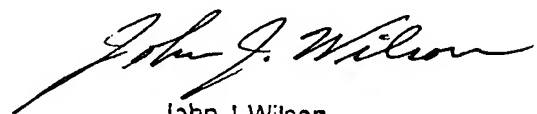
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Kilkenney whose telephone number is (571) 272-8684. The examiner can normally be reached on Mon-Fri, 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick J. Kilkenney



John J. Wilson
Primary Examiner